



ASIC

Australian Securities &
Investments Commission

REPORT 796

Response to submissions on CP 376—Updates to RG 258 and supporting documents and templates

October 2024

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 376 *Registered liquidators: Registration, ongoing obligations, disciplinary actions and insurance—Updates to RG 258 and supporting documents and templates* ([CP 376](#)) and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how Sch 2 to the Corporations Act, the *Insolvency Practice Rules (Corporations) 2016* and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see Regulatory Guide 258 *Registered liquidators: Registration, ongoing obligations, disciplinary actions and insurance requirements* ([RG 258](#)).

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A Overview

- 1 In Consultation Paper 376 *Registered liquidators: Registration, ongoing obligations, disciplinary actions and insurance—Updates to RG 258 and supporting documents and templates* ([CP 376](#)), we consulted on proposals to update Regulatory Guide 258 *Registered liquidators: Registration, disciplinary actions and insurance requirements* ([RG 258](#)) to reflect changes to the legislative framework and feedback from registered liquidators and applicants.
- 2 The proposals included:
 - (a) adding separate guidance on application requirements for each category of liquidator;
 - (b) separating our guidance on ongoing obligations from our guidance on disciplinary actions; and
 - (c) updating our guidance on each of these topics.
- 3 This report highlights the key issues that arose out of the submissions received on CP 376 and our responses to those issues.
- 4 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 376. We have limited this report to the key issues raised in the consultation.
- 5 We received one confidential and five non-confidential responses to CP 376 from industry associations, a professional services firm, a law association, a legal academic and an individual. We are grateful to respondents for taking the time to send us their comments.
- 6 For a list of the non-confidential respondents to CP 376, see the appendix. Copies of these submissions are on the [CP 376 page](#) on the ASIC website.

Responses to consultation

- 7 The main issues raised by respondents related to:
 - (a) the registration of New Zealand insolvency practitioners as liquidators in Australia;
 - (b) the discretion of registration committees to decide whether a person who does not meet the prescribed experience requirements should be registered as a liquidator;

- (c) when we expect a registered liquidator to voluntarily request the cancellation or suspension of their registration; and
- (d) information that we may publish on a decision of a disciplinary committee about a registered liquidator.

B Application requirements to be a registered liquidator

Key points

In CP 376, we proposed adding guidance on the notice requirements for New Zealand insolvency practitioners to become registered liquidators in Australia.

We also proposed adding guidance on the circumstances where a committee may decide to register an applicant, despite not meeting the prescribed experience requirements.

This section outlines the responses we received on these proposals.

Notice to be registered by New Zealand insolvency practitioners

- 8 Insolvency practitioners registered in New Zealand are entitled to registration as liquidators in Australia under the *Trans-Tasman Mutual Recognition Act 1997* (TTMR Act). New Zealand insolvency practitioners may become registered in Australia by notifying ASIC of their New Zealand registration.
- 9 In [CP 376](#), we proposed to add guidance on what information the notice must contain, and to also reflect that we cannot impose more onerous registration conditions on New Zealand applicants than those imposed in similar circumstances on Australian applicants.

Stakeholder feedback

- 10 Two respondents expressed concern around New Zealand applicants having lower entry requirements for registration than Australian applicants. Respondents suggested that ASIC should impose additional notice requirements for New Zealand applicants to account for this.
- 11 One respondent suggested that New Zealand applicants should be required to demonstrate further evidence of their qualifications, including continuing professional education hours and recent experience. Another respondent suggested that New Zealand applicants should be required to meet the same registration requirements as Australian applicants. One submission emphasised that New Zealand applicants might not be able to meet the requirement to obtain adequate professional indemnity (PI) insurance because they may not be covered under an approved limitation of liability scheme in Australia.

- 12 The same respondent also noted that the existing set of entry requirements for Australian applicants were implemented to promote a high level of professionalism, competence and confidence in the insolvency system.

ASIC's response

Under the TTMR Act, ASIC must register as a liquidator an applicant who is registered as an insolvency practitioner in New Zealand.

A New Zealand applicant cannot be required to demonstrate evidence of their qualifications or experience, or their compliance with the same eligibility requirements as for Australian applicants, to be registered in Australia.

We consider that requiring such evidence would be contrary to the obligations we have under the TTMR Act.

The matters that an applicant must notify the registration body of in order to become registered in Australia are set out in s18 of the TTMR Act. These matters are the same as set out in our guidance at RG 258.13.

Once registered in Australia, a New Zealand insolvency practitioner will be subject to the same ongoing obligations as Australian practitioners. These obligations are set out in Section E of [RG 258](#).

Experience requirements

- 13 A registration committee has discretion to register an applicant even if they do not meet certain registration requirements, including the prescribed experience requirement of 4,000 hours of relevant employment within the last five years: see s20-20(5) of Sch 2 to the *Corporations Act 2001*, titled Insolvency Practice Schedule (Corporations), and rule 20-1 of the *Insolvency Practice Rules (Corporations) 2016* (the Rules).
- 14 In [CP 376](#), we proposed to add guidance that an applicant can apply for registration if they have not met the relevant employment requirement due to a career break or other leave of absence, but they do have experience beyond the five-year limitation period. We consider that if there are valid reasons why an applicant has not met the recent employment requirement, the applicant should explain these circumstances to the committee when applying for registration.

Stakeholder feedback

- 15 One respondent suggested that the proposed guidance should provide a more positive statement in support of lesser hours where committees are considering whether to register applicants who do not meet the experience

requirement due to career breaks, including parental leave, part-time working hours or working overseas.

- 16 Another respondent suggested that we should outline the approach to waiving the 4,000 hours in five-year experience requirement.

ASIC's response

A committee may register an applicant in a broad range of circumstances, despite not meeting the employment or other criteria, so long as the committee considers the applicant would be suitable to be registered as a liquidator.

These decisions are made on a case-by-case basis, considering the relevant facts and circumstances of each application. In some cases, an applicant may not meet the employment requirement for a valid reason but may be considered suitable to be registered as a liquidator for other reasons.

We consider that the example at RG 258.36 illustrates the circumstances where an applicant may have a valid reason for not meeting the ordinary eligibility criteria. A committee, not ASIC, makes these decisions—in light of this, it is not possible to definitively outline various situations where an applicant may be suitable for registration despite not strictly meeting the standard requirements.

C Disciplinary and other actions

Key points

In CP 376, we proposed adding guidance on when we would expect a registered liquidator to voluntarily cancel or suspend their registration.

We also proposed adding guidance on when we will publish information about a disciplinary decision made by a committee.

This section outlines the responses we received.

Voluntary cancellation or suspension of registration

- 17 A liquidator may voluntarily request to cancel or suspend their registration by lodging [Form RL08](#) *Request to cancel or suspend registration as a liquidator* with ASIC.
- 18 In [CP 376](#), we proposed to set out circumstances when we would generally expect a liquidator to voluntarily request to cancel or suspend their registration, even though they may not be required do so under Sch 2. We also proposed to outline when we generally expect a liquidator to request to cancel or suspend their registration—for example, if:
- (a) an applicable significant event under s35-1(1) occurs (such as ceasing to have adequate and appropriate PI or fidelity insurance or being convicted of an offence involving fraud or dishonesty);
 - (b) they cease practising as a liquidator;
 - (c) they no longer reside in Australia; or
 - (d) they cease to be fit and proper for any other reason.

Stakeholder feedback

- 19 One respondent expressed concern around the implications of this expectation, particularly where an affected individual seeks re-registration.
- 20 The respondent noted that if an affected individual voluntarily cancelled their registration, the exclusion under s20-20(4)(e) of Sch 2 would not apply. This exclusion requires that an applicant must not have had a previous registration cancelled within the last 10 years, unless it was voluntarily cancelled. A committee could still decide to register a person where this requirement is not met.

- 21 The respondent suggested that it may be more appropriate for ASIC to cancel or suspend registration in some circumstances, rather than accept voluntary cancellation or suspension requests.

ASIC's response

The exclusion criteria at s20-20(4)(e) would not apply if an applicant voluntarily cancelled their registration within 10 years of making an application to re-register as a liquidator.

We have taken on board the feedback received and redrafted our guidance. RG 258.290 now states that we will consider exercising ASIC's power to cancel or suspend registration after:

- a registered liquidator lodges a notice of significant events; or
- we otherwise become aware of circumstances where ASIC can cancel or suspend registration.

We also state that it is unlikely that we will grant a request for cancellation or suspension where a significant event has occurred or a prescribed circumstance exists: see also RG 258.290.

Publishing information about a disciplinary decision

- 22 When a committee makes a decision about taking disciplinary action against a registered liquidator, the committee may decide that we should publish information about the committee's decision and the reasons for that decision: see s40-55(h) of Sch 2.
- 23 In [CP 376](#), we proposed to add guidance on the circumstances in which we can publish information about disciplinary decisions.

Stakeholder feedback

- 24 A committee may determine not to direct ASIC to publish a disciplinary action decision and reasons for such a decision. In these circumstances, some respondents suggested that we should publish the reasons for non-publication.
- 25 Respondents suggested that this would:
- (a) satisfy public interest in transparency regarding the conduct and decision making of a disciplinary committee;
 - (b) provide the professional community with education on these reasons; and
 - (c) protect the livelihood of the affected practitioner and any affected third parties.

- 26 Respondents cautioned that if ASIC does not publish reasons why a committee did not direct publication, this could generate public speculation. Such speculation may adversely affect ASIC, the committee, the individual involved and the integrity of the overall regulatory framework for insolvency.
- 27 The same respondents noted that while publication of specified information about a committee decision and reasons is a matter for each committee, ASIC chairs each committee.

ASIC's response

We have reviewed and clarified our guidance on publishing information about committee decisions.

We have updated our guidance to clarify that ASIC may publish a media release about a committee decision in accordance with our policy about ASIC's public comment on our regulatory activities: see RG 258.248.

We recognise there may be public interest in the reasons why a committee did not direct publication of specified information about a committee decision. However, we do not agree that we should publish a committee's reasons for not directing publication and we will only do so (including by referring to those reasons in any media release) if a committee decides we should do so.

A committee will make a decision about publication it considers most appropriate in the circumstances and, while an ASIC delegate chairs each committee, committees are independent of ASIC.

We note that particulars of any disciplinary action taken against a person (excluding under s40-5 of Sch 2) are published on the Register of Liquidators in accordance with rule 15-1(2)(f) of the Rules.

Appendix: List of non-confidential respondents

- Australian Restructuring Insolvency & Turnaround Association (ARITA)
- Chartered Accountants Australia and New Zealand (CA ANZ)
- Deloitte Touche Tohmatsu Limited
- Dr Catherine Robinson, Senior Lecturer, Faculty of Law, University of Technology Sydney
- Law Council of Australia (LCA), Business Law Section